

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 42 of 1997

in

SPECIAL CIVIL APPLICATION No. 5774 of 1996

For Approval and Signature:

Hon'ble MR. JUSTICE C.K. THAKKER
and
MR. JUSTICE S.D. PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VASUDEV TAPISHANKER DAVE

Versus

ASSISTANT GENERAL MANAGER (DISCIPLINARY AUTHORITY)

Appearance:

MR BG JANI for Petitioner
MR SI NANAVATI for Respondent No. 1
SERVED BY RPAD for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE S.D.PANDIT

Date of decision: 05/09/97

ORAL JUDGEMENT

This appeal is filed against an order passed by the learned Single Judge on September 4, 1996 in Civil Application No. 5774 of 1996. That Civil Application was filed in Special Civil Application No. 487 of 1995.

The appellant is the original petitioner in the above Special Civil Application. He was a Bank Manager who was dismissed after holding Departmental Inquiry. An appeal against the order of dismissal was also dismissed, subject to certain modifications against which above petition was filed and rule was issued, and the matter is pending for final hearing.

It appears that during pendency of this petition, Civil Application No. 5774 of 1996 was filed for relief in terms of Para-14, which reads as under :-

- "(a) Be pleased to direct the opponents to
release all the terminal benefits with
interest as per the service Regulation of
the opponent-bank applicable to the
applicant herewith forthwith;
- (b) Pass such other and further order as the
Hon'ble Court deems fit and proper in the
interest of justice."

The learned Single Judge by the impugned order rejected that Civil Application of the Appellant-Applicant. Mr. Jani, learned counsel for the appellant contended that the learned Single Judge has committed an error of law in rejecting the Civil Application filed by the appellant. According to him, even if the order of dismissal which has been partly modified will be confirmed by this Court and as the Civil Application will be dismissed in its entirety then also, according to the order passed by the appellate authority in the light of relevant rules relating to the provident fund, gratuity and other retirement benefits of the appellant, he will be entitled to certain amount. He submitted that in these circumstances, without prejudice to the rights and contentions of the parties, a limited prayer ought to have been granted by the learned Single Judge.

In view of the fact that the main matter is pending and is expedited, we do not think it proper to

interfere with the order passed by the learned Single Judge in Civil Application. Mr. Jani, however, submitted that in view of the fact that order is passed before about 4 years and that the petitioner is without any income whatsoever, and that according to him, he is entitled to certain benefits, without prejudice to the rights and contentions of the parties and pendency of the petition, he may be permitted to make an application to withdraw some amount from his Provident Fund Account and that the Bank may be directed to pay the same.

In the facts and circumstances of the case, we grant liberty to the appellant to make such an application to the Bank will the Bank will consider in accordance with law. It is, however, clarified that such an action would be without prejudice to the rights and contentions of the appellant.

So far as the main matter is concerned, it is expedited for final hearing. The learned counsel for appellant is at liberty to request the learned Single Judge to fix the matter so that it could be expeditiously heard, particularly when the matter pertains to dismissal and also of retirement benefits, and according to the petitioner, this has caused great prejudice to him. Letters Patent Appeal is accordingly dismissed with no order as to costs.

It is further clarified that pendency of petition before the learned Single Judge will not debar the Bank from considering the issue of granting withdrawal from the Provident Fund Account.

Prakash*